THE HON'BLE SRI JUSTICE N.V. RAMANA

W.P. No. 12003 of 2002

Oral order:

The petitioners-AP TRANSCO, have filed this writ petition assailing the award dated 18.12.2002, passed by the Labour Court in I.D. No. 81 of 1991, directing the petitioners to issue fresh appointment order to respondent No.2-workman without backwages.

The learned Standing Counsel for the petitioners mainly submitted that respondent No.2 though did not produce any material nor furnished any details of his engagement by the petitioners, yet the Labour Court had directed the petitioners to issue fresh appointment without backwages, which is illegal and arbitrary.

On the other hand, the learned counsel for respondent No.2 contends that he had produced material to show that he was engaged by a Contractor, and based on such material, the Labour Court had directed issuance of fresh appointment order, and no interference is called for therewith.

On 05.07.2002, this Court while admitting the writ petition, granted interim suspension of the award, and as a result whereof, respondent No.2 was not given fresh appointment order.

Heard the learned Standing Counsel for the petitioners-AP TRANSCO and the learned counsel for respondent No.2.

The law is well settled that this Court in exercise of its jurisdiction under Article 226 of the Constitution of India, does not sit in appeal over the decision arrived at by an inferior Tribunal/Court and re-appreciate the evidence. However, the decision of an inferior Court or Tribunal can be interfered with, if such decision is based on no evidence.

Though respondent No.2 contends that he worked with the petitioners for more than 240 days, the fact remains he has not produced any material to substantiate his claim, and more so when onus is on him, as held by the apex Court in **Range Forest Officer v. S.T. Hadimani**, to prove that he has worked for more than 240 days. In **ONGC Ltd. v. Shyamlal Chandra Bhowmik**, the apex Court while reiterating this view, held that the High Courts should not entertain writ petitions directly when claim of more than 240 days service in a year is raised, and that the said question being a question of fact, was not to be examined by the writ petition and the proper remedy for the workman raising such claim is to raise an industrial dispute under the Industrial Disputes Act, 1947 so that evidence can be

analyzed and a conclusion arrived at. In the instant case, respondent No.2 has not filed any material to show that he had worked with the petitioners for more than 24 days. Therefore, it is not proper for this Court to confirm the award of the Labour Court directing the petitioners to issue fresh appointment order to respondent No.2. However, the ends of justice would be met if the matter is remanded to the Labour Court for adjudication on merits afresh after giving opportunity to the parties to adduce evidence.

Hence, the writ petition is allowed, the impugned award is set aside, and the matter is remanded to the Labour Court for adjudication of the matter on merits afresh after giving opportunity to the parties to adduce evidence. The Labour Court shall dispose of the I.D. within a period of six months from the date of receipt of a copy of this order. No costs.

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N.V. RAMANA, J.

Date: 23.02.2006

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